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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,142	07/03/2003	Patrick M. Cullen	03-005 US	6836

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ADVANCED NEUROMODULATION SYSTEMS, INC.
6901 PRESTON ROAD
PLANO, TX 75024

EXAMINER

MULLEN, KRISTEN DROESCH

ART UNIT	PAPER NUMBER
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3766

MAIL DATE	DELIVERY MODE
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06/05/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/613,142

Applicant(s)

CULLEN ET AL.

Examiner

Kristen Droesch Mullen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 15-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (2004/0215288) in view of Duncan et al. (7,187,976).

Regarding claims 15 and 21, Lee shows placing an implantable pulse generator in an activated mode using an external programming device and an implantable pulse generator that has a treatment protocol program associated with a plurality of stimulation settings with each setting defining at least an independent electrode configuration, and controlling the operation of the device by the external programming device (Figs. 5A-5B). Although Lee fails to show at least two treatment protocol programs and sending a program selection signal to the implantable pulse generator, attention is directed to Duncan who teaches that it is desirable to provide a generic implantable stimulator capable of restoring multiple functions where the stimulator is controllable by various functions of modes (i.e. treatment protocol programs) since implants to date have only been developed to restore individual functions (Col. 2, lines 43-53; Col. 11, line 11-Col. 12, line 59). It would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the method of Lee to include at least two treatment protocol programs and sending a program selection signal to the implantable pulse generator as taught by Duncan in order to provide a generic implantable stimulator capable of restoring multiple

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functions where the stimulator is controllable by various functions of modes (i.e. treatment protocol programs) since implants to date have only been developed to restore individual functions.

Further with respect to claim 21, Duncan further shows the sending does not communicate data defining stimulation sets of the selected program to the implantable pulse generator and the implantable pulse generator alternates generation and delivery of pulses according to the stimulation sets of the selected stimulation program (Col. 11, line 11-Col. 12, line 59).

With respect to claims 16 and 22, Duncan shows delivering a power signal (Col. 7, lines 28-30).

Regarding claims 17 and 23, Lee shows communication is via RF signal (para. [0030]) and Duncan also shows communication is via RF signal (Col. 7, lines 28-30).

With respect to claims 18 and 24, Lee shows the external programming device can control the pulse amplitude parameters (para. [0033]).

Regarding claims 19 and 25, Duncan shows the program selection signal designates which of the treatment protocol programs is to be executed by the IPG and the external programming device is operated by a patient (Col. 11, line 11-Col. 12, line 59)

Response to Arguments

3. Applicant's arguments with respect to claims 15-26 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen Droesch Mullen whose telephone number is (571) 272-4944. The examiner can normally be reached on M-F, 10:30 am-6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Layno can be reached on (571) 272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

kdm

Kristen Drosch Mullen
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